

DRAFT CLEANUP GRANT GUIDELINES

OVERVIEW

AGENCY: ENVIRONMENTAL PROTECTION AGENCY (EPA)

TITLE: Proposal Guidelines for Brownfields Cleanup Grants

ACTION: Request for Proposals

RFP NO: To Be Determined

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NO.: 66.818

DATES: Proposals are due [at a date to be determined], 2008. Proposals may be sent through the U.S. Postal Service, commercial delivery service, or electronically through www.grants.gov. Only one method should be used for the submission of the original, complete proposal. Proposals sent through the U.S. Postal Service or sent via a commercial delivery service must be postmarked by [at a date to be determined], 2008. Proposals sent electronically through grants.gov must be received by grants.gov by 11:59 p.m. Eastern Time on [at a date to be determined], 2008. Please refer to Section IV, “Due Date and Mailing Instructions” for further instructions.

SUMMARY: The Small Business Liability Relief and Brownfields Revitalization Act (“Brownfields Law”, Public Law 107-118) requires the U.S. Environmental Protection Agency (EPA) to publish guidance to assist applicants in preparing proposals for grants to assess and cleanup brownfield sites. EPA’s Brownfields

Program provides funds to empower states, communities, tribes and nonprofits to prevent, inventory, assess, cleanup and reuse brownfield sites. EPA provides brownfields funding for three types of grants:

1. Brownfields Assessment Grants - provide funds to inventory, characterize, assess, and conduct cleanup and redevelopment planning and community involvement related to brownfield sites.
2. Brownfields Revolving Loan Fund (RLF) Grants – provide funding for a grant recipient to capitalize a revolving loan fund and to provide subgrants to carry out cleanup activities at brownfield sites
1. Brownfields Cleanup Grants - provide funds to carry out cleanup activities at a specific brownfield site owned by the applicant.

In prior years EPA has issued combined guidelines for all three types of grants. However, in these guidelines EPA is seeking proposals for Cleanup Grants only. If you are interested in requesting funding for Assessment or RLF funding please refer to announcement numbers [to be determined], (assessment grant guidelines) or [to be determined] (RLF grant guidelines).

FUNDING/AWARDS: The total estimated funding expected to be available under this national competition for assessment, RLF and cleanup grants is approximately \$72 million. EPA must

expend 25 percent of the amount appropriated for Brownfields grants on sites contaminated with petroleum. EPA anticipates awarding approximately 200 cooperative agreements among all three grant types

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SECTION I - FUNDING OPPORTUNITY DESCRIPTION

Section 104(k) of the Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Law) provides federal financial assistance for brownfield revitalization, including grants for assessment, cleanup, and job training.

A brownfield site is defined as real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of hazardous substances, pollutants, contaminants, controlled substances, petroleum or petroleum products or is mine-scarred land.

EPA funds projects that will result in the assessment, cleanup and redevelopment of brownfield sites. Proposals will be evaluated on the extent to which the applicant demonstrates: economic and environmental needs of the targeted communities; a vision for the reuse and redevelopment of brownfield sites and the capability to achieve that vision; reasonable and eligible tasks; partnerships and leveraged resources necessary to complete the project; and economic, environmental and social benefits associated with the reuse and redevelopment of brownfield sites.

A. Description of Grant

Brownfield Cleanup Grants – provide funds to carry out cleanup activities at a specific brownfield site owned by the applicant. An individual applicant can apply for up to \$200,000 per brownfield site. Applicants can submit up to three site specific proposals. A 20 percent cost share is required for Brownfield Cleanup grants. To be eligible for funding, the applicant must be the sole owner of the site at the time of proposal submission or must achieve sole ownership by June 30, 2009. In addition, the applicant must have an ASTM E1903-97 Phase II site assessment report or equivalent site investigation report complete prior to proposal submission. Refer to page 7 for additional site eligibility requirements.

Proposals for funding must address certain threshold criteria (pass/fail) and ranking criteria for cleanup grants. Your proposal must also indicate whether you are applying for hazardous substance or petroleum funds. Properties that are mine scarred land or contaminated with controlled substances are considered hazardous substances for the purposes of applying for EPA Brownfields grants. An applicant applying for both hazardous substance and petroleum cleanup grant funding at the same site must submit ONE proposal, which cannot exceed \$200,000. Co-mingled language here

For more information on a range of brownfields grants topics, please refer to EPA's Brownfields Frequently Asked Questions at: www.epa.gov/brownfields/fy08_grantfaq_final.pdf

B. Uses of Grant Funds

In addition to direct costs associated with the cleanup and planning for brownfield sites and programmatic management of the grant, grant funds may also be used for the following activities:

1. A *local* government (as defined in 40 CFR Part 31.3, *Local Government*) may use up to 10 percent of its grant funds for any of the following activities:
 - health monitoring of populations exposed to hazardous substances, pollutants, or contaminants from a brownfield site;

- monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance, pollutant, or contaminant from a brownfield site;
- other related program development and implementation activities (e.g., writing local brownfield-related ordinances) to effectively oversee assessments and cleanups described in an EPA approved work plan.

The term local government does not include state or tribal governments but may include, among others, public housing authorities, school districts and councils of governments.

2. A portion of any brownfields grant or loan may be used to purchase environmental insurance.
3. Costs associated with programmatic management of the grant, such as required performance reporting, environmental oversight and funds management.

All purchases must be consistent with the applicable OMB Cost Circulars – A-21 is applicable to universities and educational institutions, A-87 is applicable to governmental units, and A-122 is applicable to non-profit organizations.

Grant funds cannot be used for the following activities:

1. Administrative costs, such as indirect costs, record-keeping and retention costs, financial management systems and audits.

2. Proposal preparation costs.

See FAQs at [web site to be determined] for additional information on ineligible grant activities.

C. EPA Strategic Plan Linkage

EPA's Strategic Plan defines goals, objectives, and sub-objectives for protecting human health and the environment. All three grant types will support progress toward Goal 4 (Healthy Communities and Ecosystems), Objective 4.2 (Communities), and Sub-objective 4.2.3 (Assess and Cleanup Brownfields). Specifically, these grants will help sustain, clean up, and restore communities and the ecological systems that support them by providing funds to assess and clean up brownfield sites. EPA will negotiate work plans with recipients to collect information about the hazardous substances, pollutants and petroleum contaminants addressed and the amount of land made safe for communities' economic and ecological use.

D. Measuring Environmental Results: Anticipated Outcomes/Outputs

Pursuant to EPA Order 5700.7, "Environmental Results under EPA Assistance Agreements," EPA requires that all grant recipients adequately address environmental outputs and outcomes.

EPA must report on the success of its Brownfield program through measurable outputs and outcomes such as the number of sites cleaned up, number of jobs created and amount of funding

leveraged. Applicants must discuss in their proposals how funding will help EPA achieve environmental outputs and outcomes. Outputs specific to each project will be identified as deliverables in the work plan negotiated after a grant is awarded. Grantees will be expected to report progress toward the attainment of project outputs during the project performance period.

Outputs and Outcomes are defined as follows:

1. *Outputs.* Outputs are measurable activities, efforts, deliverables, or work products related to an environmental goal or objective that a grant applicant proposes to produce or provide during the project period. The expected output for the grants awarded under these guidelines is the cleanup of brownfield sites. Other outputs may include the number of community meetings held and/or the number of tanks pulled.
2. *Outcomes.* Outcomes refer to the result, effect, or consequence that will occur from carrying out the activities under the grant.
 - Outcomes may be environmental, behavioral, health-related or programmatic; must be quantitative; and may not necessarily be achievable during the project period.
 - Expected outcomes of brownfield grants include the number of jobs leveraged and other funding leveraged through the economic reuse of properties; the number of acres made ready for reuse; or acres of greenspace created for communities.

(View EPA's Strategic Plan on the internet at <http://www.epa.gov/ocfopage/plan/2003sp.pdf> and view EPA's Order 5700.7 at <http://www.epa.gov/ogd/grants/award/5700.7.pdf>)

SECTION II - AWARD INFORMATION

A. What is the amount of available funding?

The total estimated funding available under this national competition for assessment, cleanup and RLF grants is approximately \$72 million. EPA anticipates selecting about 200 proposals during this competition. EPA reserves the right to make additional selections under this competition. Any additional selections for awards will be made no later than four months from the date of the original selection decision. EPA reserves the right to reject all proposals and make no awards under this announcement or make fewer awards than anticipated.

B. What is the project period for awards resulting from this solicitation?

The project period for cleanup grants is up to three years.

SECTION III: APPLICANT AND SITE ELIGIBILITY

A. Who Can Apply?

Eligible applicants, including those with existing brownfields grants, may apply for one, two, or all of the grant types.. These proposal guidelines are for Cleanup grants only. If you are

interested in applying for assessment or RLF funding, please see solicitation numbers [to be determined]. The following table indicates, by grant type, what entities are eligible to apply:

Type of Applicant	Assessment	RLF	Cleanup ¹
General Purpose Unit of Local Government ²	•	•	•
Land Clearance Authority or other quasi-governmental entity that operates under the supervision and control of, or as an agent of, a general purpose unit of local government	•	•	•
Government Entity Created by State Legislature	•	•	•
Regional Council or group of General Purpose Units of Local Government	•	•	•
Redevelopment Agency that is chartered or otherwise sanctioned by a state	•	•	•
State	•	•	•
Indian Tribe other than in Alaska ³	•	•	•
Alaska Native Regional Corporation, Alaska Native Village Corporation, and Metlakatla Indian Community ⁴	•	•	•
Nonprofit organizations ⁵			•

Type of Applicant	Assessment	RLF	Cleanup ¹
¹ To be eligible for a cleanup grant, the applicant must be the sole owner of the property by June 30, 2009. ² For purposes of the brownfields grant program, EPA defines general purpose unit of local government as a “local government” as defined under 40 CFR Part 31. ³ Intertribal Consortia are eligible for funding in accordance with EPA’s policy for funding intertribal consortia published in the Federal Register on November 4, 2002. This policy also may be obtained from your Regional Brownfields Contact. ⁴ Alaska Native Regional Corporations and Alaska Native Village Corporations are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 and following). ⁵ For the purposes of the brownfields grant program, the term “nonprofit organization” means any corporation, trust, association, cooperative, or other organization that is operated mainly for scientific, educational, service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization. Non profit organizations exempt from taxation under Section 501 (c)(4) of the Internal Revenue Code that lobby are not eligible for EPA grant funding.			

B. Cost Share

The Brownfields Law requires applicants to provide a 20 percent cost share for and cleanup grants. For example, a \$200,000 cleanup grant will require a \$40,000 cost share. The cost share, which may be in the form of a contribution of money, labor, material, or services, must be for eligible and allowable costs under the grant and cannot include administrative costs, as described in [web site to be determined].

Applicants may request a waiver of the 20 percent cost share requirement based on hardship.

EPA will consider hardship waiver requests on a case-by-case basis and will approve such requests on a limited basis. Refer to the *Cost Share* threshold criteria for Cleanup grants in Section III. D. for additional information.

C. Site Eligibility

Eligible sites must meet the definition of a brownfield as described in *Appendix 2*.

The following types of properties are not eligible for brownfields funding:

- Facilities listed (or proposed for listing) on the National Priorities List (NPL);
- Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decrees issued to or entered into by parties under CERCLA; and
- Facilities that are subject to the jurisdiction, custody or control, of the United States government. (Note: Land held in trust by the United States government for an Indian tribe is eligible for brownfields funding.)

The following special classes of property require a “Property Specific Determination” from EPA to be eligible for brownfields funding:

- Properties subject to planned or ongoing removal actions under CERCLA.
- Properties with facilities that have been issued or entered into a unilateral administrative order, a court order, an administrative order on consent, or judicial consent decree or to which a permit has been issued by the U.S. or an authorized state under the Resource Conservation and Recovery Act (RCRA), the Federal Water Pollution Control Act (FWPCA), the Toxic Substances Control Act (TSCA), or the Safe Drinking Water Act (SDWA).

- Properties with facilities subject to RCRA corrective action (§3004(u) or §3008(h)) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures.
- Properties that are land disposal units that have submitted a RCRA closure notification or that are subject to closure requirements specified in a closure plan or permit.
- Properties where there has been a release of PCBs and all or part of the property is subject to TSCA remediation.
- Properties that include facilities receiving monies for clean up from the LUST trust fund.

EPA's approval of Property Specific Determinations will be based on whether or not awarding a grant will protect human health and the environment and either promote economic development or enable the property to be used for parks, greenways, and similar recreational or nonprofit purposes. Property Specific Determination requests should be attached to your proposal and do not count in the 18 page limit. (See *Appendix 2* for more information or contact your regional coordinator listed in *Appendix 1* if you think your site requires a Property Specific Determination.)

Additionally, applicants for brownfields grant funds cannot be liable for contamination on the site. Liability is determined differently for hazardous and petroleum sites.

For sites contaminated by hazardous substances, persons liable for the contamination under CERCLA § 107 (the Superfund law) are not eligible for grants. Liable parties may include all current and former owners and operators of the site and parties that arranged for or contributed to

the disposal or treatment of hazardous substances on the site. Therefore, even owners who did not cause or contribute to the contamination may be held liable.

CERCLA does provide owners or prospective owners with specific defenses to liability, thereby allowing them eligibility for grants. Some such defenses include Bona Fide Prospective Purchasers (BFPPs), contiguous property owners, or local or state governments that acquire land through involuntary acquisition (i.e. bankruptcy, tax delinquency, or abandonment).

For cleanup grants, applicants must demonstrate in their proposals that they are not a liable party. Because cleanup grant applicants must own the property, these applicants must be able to demonstrate compliance with one of the liability protections to ensure grant eligibility, since current owners of contaminated property are liable if unable to assert a liability protection. For more information on these liability protections, please refer to the Brownfields Law and the March 6, 2003, EPA guidance entitled “Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA (“Common Elements”)” (<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-element-guide.pdf>). Applicants may also call the Regional Brownfields contact listed in *Appendix 1* with questions about eligibility.

Demonstration of a Bona Fide Prospective Purchaser

The most common liability protection an applicant will assert is the bona fide prospective purchaser protection. Normally, BFPP status is only available to entities that purchase

property after January 11, 2002. However, a grant applicant can take advantage of this protection, for grant purposes only, even if it purchased a site prior to January 11, 2002, so long as the applicant complied with all the other BFPP requirements that include:

- All disposal of hazardous substances at the facility occurred before the person acquired the facility.
- The owner must not be liable in any way for contamination at the facility or affiliated with a responsible party. Affiliations include familial, contractual, or corporate relationships that are the result of a reorganization of a business entity with potential liability.
- The owner must have made all appropriate inquiries (AAI) into the prior ownership and uses of the facility prior to purchase. AAI, typically met with an ASTM based Phase 1 environmental assessment, cannot be more than one year old at time of purchase and must be updated, prior to purchase, if it is more than six months old at the time of purchase. Please see EPA's AAI Final Rule (70 FR 66070) (<http://www.epa.gov/brownfields/regneg.htm>).
- The owner must take appropriate care regarding any hazardous substances found at the facility, including preventing future releases and exposures to hazardous substances on the property.
- The owner must provide all legally required notices and cooperate with authorized response persons in the event of discovery or release of any hazardous substances at the facility.
- The owner must comply with any land use restrictions associated with response actions at the property.

D. Threshold Criteria for Cleanup Grants

Note: For purposes of the threshold eligibility review, EPA, if necessary, may seek clarification of applicant information and/or consider information from other sources, including EPA files.

Your responses to these questions must be included in the proposal you submit to EPA. See Section IV, Part C on pg 19 for more information on required proposal content.

A. Applicant Eligibility

Describe how you are an eligible entity for the grant for which you are applying. Refer to the description of applicant eligibility in the section *Who Can Apply* in Section III of these guidelines. For entities other than cities, counties, tribes or states, please attach documentation of your eligibility (e.g., resolutions, statutes, etc.). If you are a non-profit organization, you must provide documentation, as an attachment to this proposal, indicating non-profit status.

Note: To receive a cleanup grant, the applicant must be the sole owner of the property that is the subject of its cleanup grant proposal by June 30, 2009. An applicant who is not the sole owner of the subject property at time of proposal submission must achieve sole ownership by June 30, 2009, to be eligible for funding. For the purposes of eligibility determinations in these guidelines only, the term “own” means fee simple title evidenced by a recorded deed on or before the June 30, 2009 deadline. The grantee must maintain such sole ownership until all of the cleanup work funded by the grant has been completed and the grant is closed

out. EPA reserves the right to request documentation of ownership as part of its threshold review of the proposal.

B. Letter from the State or Tribal Environmental Authority

For an applicant other than a state or tribal environmental authority, attach a current letter from the appropriate state or tribal environmental authority acknowledging that the applicant plans to conduct cleanup activities and is planning to apply for Federal grant funds. Letters regarding proposals from prior years are not acceptable. If you are applying for multiple types of grant program activities, you need to submit only one letter acknowledging the relevant grant activities. *However, you must provide the letter as an attachment to EACH proposal.* Please note that general correspondence and documents evidencing state involvement with the project (i.e., state enforcement orders or state notice letters) are NOT acceptable. Please provide advance notice to the appropriate state or tribal environmental authority to allow adequate time to receive the letter to accompany your proposal.

C. Site Eligibility and Property Ownership Eligibility

All applicants must respond to questions #1- 6. If the site is a hazardous substance site or a mixed hazardous substance and petroleum site, please respond to questions #7 & 8. If the site is a petroleum site, please respond to question #9.

Site Eligibility:

1. Basic Site Information. Identify (a) the name of the site; (b) the address of the site; (c) the current owner of the site; and (d) if you are not the current owner, the date you plan to acquire ownership of the site (required for cleanup grants).
2. Status and History of Contamination at the Site. Identify (a) whether this site is contaminated by petroleum or hazardous substances; (b) the operational history and current uses(s) of the site; (c) environmental concerns, if known, at the site; and (d) how the site became contaminated and, to the extent possible, describe the nature and extent of the contamination.
3. Sites Ineligible for Funding. Affirm that the site is (a) not listed or proposed for listing on the National Priorities List; (b) not subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA; and (c) not subject to the jurisdiction, custody, or control of the United States government. (Note: Land held in trust by the United States government for an Indian tribe is eligible for brownfield funding.) Please refer to CERCLA §§ 101(39)(B)(ii), (iii), and (vii), and *Appendix 2* of these Guidelines.
4. Sites Requiring a Property-Specific Determination Certain types of sites require a property-specific determination in order to be eligible for funding. Please refer to Appendix 3, Section 3.4, to determine whether your site requires a property-specific determination. If your site requires a property-specific determination, then you must attach the information requested in FAQs [web site to be determined].

- 5. Environmental Assessment Required for Cleanup Proposals.** A written ASTM E1527-05 or equivalent Phase I report or a written report prepared in compliance with the All Appropriate Inquiries Final Rule (70FR66070) must be completed. In the case of properties purchased prior to November 1, 2006, a written Phase I report completed in compliance with ASTM E1527-00 or equivalent is sufficient. In addition, the applicant must have an ASTM E1903-97 or equivalent Phase II site assessment report completed prior to proposal submission. Equivalent reports would include site investigations or remedial action plans developed for a state cleanup program or Office of Surface Mining surveys for mine-scarred lands. Provide the date of the Phase I or equivalent report and the date of the Phase II or equivalent report.

Property Ownership Eligibility

EPA grant funding may not be used to pay for response costs at a brownfield site for which the recipient of the grant or loan is potentially liable under CERCLA § 107. The following questions are intended to help EPA ensure that you are not liable under CERCLA for response costs at the site designated in your proposal, or determine, if necessary, that your site is eligible for funding as a petroleum site. Please answer the following questions fully and in the order that they appear (note that based on your responses, EPA may need to obtain additional information to make this determination).

- 1.** Affirm that you are not potentially liable for contamination at the site under CERCLA § 107 (*e.g.*, as a current owner or operator of a facility, an owner or operator of a facility at the time of disposal of a hazardous substance, a party that arranged for the treatment or disposal of

hazardous substances, or a party that accepted hazardous substances for transport to disposal or treatment facilities at the site) and explain why.¹

2. Enforcement Actions. (Hazardous Substance Sites) Identify known ongoing or anticipated environmental enforcement actions related to the brownfield site for which funding is sought. Describe any inquiries or orders from federal, state, or local government entities that the applicant is aware of regarding the responsibility of any party (including the applicant) for the contamination or hazardous waste at the site. The information provided in this section may be verified, and EPA may conduct an independent review of information related to the applicant's responsibility for the contamination or hazardous waste at the site.

3. Information on Liability and Defenses/Protections. (Hazardous Substance Sites)

- a. Information on the Property Acquisition. To save space, you may combine subsections i-v below into one response, though please be sure to fully answer each question.

Describe:

- i) How you acquired or will acquire ownership (*e.g.*, by negotiated purchase from a private individual, by purchase or transfer from another governmental unit, by foreclosure of real property taxes, by eminent domain, or other (describe));
 - ii) The date you acquired or will acquire the property;

¹ Because current owners of sites are potentially liable under CERCLA, cleanup grant applicants who own the site (or plan to acquire the site) must be able to meet the requirements of one of the CERCLA landowner liability protections, such as the bona fide prospective purchaser provision (CERCLA § 107(r)), the innocent landowner defense (CERCLA § 107(b)(3) and 101(35)(A)), or the exclusion for state or local governments that involuntarily acquire property (CERCLA § 101(20)(D)).

- iii) The nature of your ownership (fee simple or other) (note that you must have sole ownership of the site to be eligible for funding);
- iv) The name and identity of the party from whom you acquired ownership (*i.e.*, the transferor);
- v) All familial, contractual, corporate or financial relationships or affiliations you have or had with all prior owners or operators (or other potentially responsible parties) of the property (including the person or entity from which you acquired the property).

b. Timing of Hazardous Substance Disposal Identify whether all disposal of hazardous substances at the site occurred before you acquired (or will acquire) the property and whether you caused or contributed to any release of hazardous substances at the site. Affirm that you have not, at any time, arranged for the disposal of hazardous substances at the site or transported hazardous substances to the site.

c. Pre-Purchase Inquiry Describe any inquiry by you or others into the previous ownership, uses of the property, and environmental conditions conducted prior to taking ownership.

Please include in your description

- the types of site assessments performed (*e.g.*, ASTM Phase I or equivalent), the dates of each assessment,² and the entity for which they were performed (state whether the

² Please note that if your Phase I assessment was conducted more than 180 days prior to the date you plan to purchase the property, you will need to update certain aspects of the Phase I in order to take advantage of the bona fide prospective purchaser provision. If this is the case, please affirm that you have or will conduct the appropriate updates within 180 days of purchase.

- assessment was performed specifically for you, or if not, the name of the party that had the assessment performed and that party's relationship to you); and
- who performed the assessments and identify his/her qualifications to perform such work;
- d. Post-Acquisition Uses Describe all uses to which the property has been put since you acquired ownership (or the uses that you anticipate once you acquire the property) through the present, including any uses by persons or entities other than you. Please provide a timeline with the names of all current and prior users during the time of your ownership; the dates of all uses; the details of each use, including the rights or other reason pursuant to which the use was claimed or taken (*e.g.*, lease, license, trespass); and your relationship to the current and prior users.
- e. Continuing Obligations.³ Describe *in detail* the specific appropriate care that you exercised (or if you've yet to acquire the property, that you will exercise upon acquiring the property) with respect to hazardous substances found at the facility by taking reasonable steps⁴ to:

3 Applicants that own contaminated land should be aware that some CERCLA liability protections require that the site owner meet certain continuing obligations. For example, grantees must comply with land use restrictions and institutional controls; take reasonable steps with respect to the hazardous substances on the property; cooperate, assist and allow access to authorized representatives; and comply with CERCLA information requests and subpoenas and provide legally required notices. For more information on the obligations of owners of contaminated property, see EPA's *Common Elements Reference Sheet* at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-ref.pdf>.

4 Please note that reasonable steps may include actions such as limiting access to the property, monitoring known contaminants, and complying with state and/or local requirements. The steps taken to prevent or limit exposure to previously-released hazardous substance may depend, for example, on such things as the location of the site in relation to the public and whether the public has been known to use (or even trespass on) the site.

- stop any continuing releases;
- prevent any threatened future release;
- prevent or limit exposure to any previously released hazardous substance.

Please confirm your commitment to:

- comply with all land use restrictions and institutional controls;
- assist and cooperate with those performing the cleanup and to provide access to the property;
- comply with all information requests and administrative subpoenas that have or may be issued in connection with the property; and
- provide all legally required notices.

4. Petroleum Sites

The Brownfields Law allows certain sites contaminated with petroleum or petroleum product to be eligible for brownfields grant funding. Eligibility will be determined by EPA or the state, as appropriate (See *Appendix 3, part 3.3.2 Contamination by Petroleum or Petroleum Product* for a description of the eligibility requirements).

Non-Tribal applicants must provide the information requested below to your state, so that the state can make the necessary determinations on petroleum site eligibility in *Appendix 3, part 3.3.2*. Include any response to your request received from your state regarding site eligibility with this proposal. If you do not receive a written response from your state by the deadline for

filing proposals, please indicate this in your proposal cover letter. (*Note:* You must provide EPA with the date you requested your state to make the petroleum site determinations. EPA will make the petroleum site eligibility determination if a state is unable to do so following a request from an applicant.) Also in your letter to the State, please request that the State provide information regarding whether it applied EPA's guidelines in making the petroleum determination or, if not, what standard it applied.

Tribal applicants must submit the following information with their proposal to EPA. EPA will make the petroleum site eligibility determinations for Tribes.

Provide the following information to your state and to EPA. If you are unable to obtain information on any of the questions below, you must include a brief explanation of why the information requested below is not available:

- a) Current and Immediate Past Owners. Identify the current and immediate past owner of the site. For purposes of petroleum eligibility determinations in these Guidelines only, the current owner is the entity that will own the site on June 30, 2008. For cleanup grants, this must be the applicant.
- b) Acquisition of Site. Identify when and by what method the current owner acquired the property (*e.g.*, purchase, tax foreclosure, donation, eminent domain).
- c) No Responsible Party for the Site. Identify whether the current and immediate past owner (which includes, if applicable, the applicant) (1) dispensed or disposed of petroleum or

petroleum product, or exacerbated the existing petroleum contamination at the site, and

(2) took reasonable steps with regard to the contamination at the site.

- d) Cleaned Up by a Person Not Potentially Liable Identify whether you (the applicant) dispensed or disposed of petroleum or petroleum product, or exacerbated the existing petroleum contamination at the site, and whether you took reasonable steps with regard to the contamination at the site.
- e) Relatively Low Risk Identify whether the site is of “relatively low risk” compared to other petroleum or petroleum product-only contaminated sites in the state in which the site is located, including whether the site is receiving or using Leaking Underground Storage Tank (LUST) Trust Fund monies.
- f) Judgments, Orders, or Third Party Suits Provide information that no responsible party (including the applicant) is identified for the site through, either:
- A judgment rendered in a court of law or an administrative order that would require any person to assess, investigate, or clean up the site; or
 - An enforcement action by federal or state authorities against any party that would require any person to assess, investigate, or clean up the site; or
 - A citizen suit, contribution action or other third party claim brought against the current or immediate past owner, that would, if successful, require the assessment, investigation, or cleanup of the site.
- g) Subject to RCRA. Identify whether the site is subject to any order under section 9003(h) of the Solid Waste Disposal Act.
- h) Financial Viability of Responsible Parties For any current or immediate past owners identified as responsible for the contamination at the site, provide information regarding

whether they have the financial capability to satisfy their obligations under federal or state law to assess, investigate or clean up the site. Note: *If no responsible party is identified in (c) or (f) above, then the petroleum-contaminated site may be eligible for funding. If a responsible party is identified above, EPA or the state must next determine whether that party is viable. If any such party is determined to be viable, then the petroleum-contaminated site may not be eligible for funding.*

D. Cleanup Authority and Oversight Structure

Please note that you will be required to comply with all applicable Federal and State laws; and ensure that the cleanup protects human health and the environment.

1. Describe how you will oversee the cleanup at the site. Indicate whether you plan to enroll in a state or tribal response program. If you do not plan to enroll in a state or tribal response program, or an appropriate state or tribal response program is not available, you will be required to consult with U.S. EPA to ensure cleanups are protective of human health and the environment. Therefore, if you do not plan to enroll in a state or tribal response program, provide a description of the technical expertise you have to conduct, manage, and oversee the cleanup and/or whether you plan to acquire additional technical expertise. If you do plan to acquire additional technical expertise, discuss how, consistent with the competitive procurement provisions of 40 CFR 31.36 (for eligible government entities) or 40 CFR Part 30 (for nonprofit organizations), you will ensure that this technical expertise is in place prior to beginning cleanup activities.

2. Cleanup response activities often impact adjacent or neighboring properties. For example, access to neighboring properties may be necessary to conduct the cleanup, perform confirmation sampling, or monitor offsite migration of contamination. If this type of access is needed, provide your plan to acquire access to the relevant property.

E. Cost Share

Cleanup grant recipients are required by the Brownfields Law to provide a 20 percent cost share. This cost share is calculated as 20 percent of the total federal cleanup funds awarded. For example, if you are applying for \$200,000 of federal cleanup funds, you must provide a cost share of an additional \$40,000. The cost share may be in the form of a contribution of money, labor, material, or services from a non-federal source. If the cost share is in the form of a contribution of labor, material, or other services, it must be incurred for an *eligible and allowable expense* under the grant and not for ineligible expenses, such as administrative costs (see *FAQs Website* for a discussion of prohibited costs).

Describe your plans for providing the cost share, including the sources of the funding or services, as required for this cleanup grant. Cleanup grant applicants may petition EPA to waive the cost-share requirement if it would place an undue hardship on the applicant. EPA will consider hardship waiver requests on a case-by-case basis and will approve such requests on a limited basis. In considering such requests, EPA will look for indicators such as low per-capita income, unemployment rate significantly above national average, or unemployment or economic

adjustment problems resulting from severe short-term or long-term changes in economic conditions.

If you are requesting a hardship waiver of the cost share, provide an explanation for the basis of your request as part of your proposal. This explanation must be submitted on a separate page, titled “Hardship Waiver Request,” and will not count against the proposal page limit. Your explanation should include the following information: the unemployment rate; per capita income; data demonstrating substantial out-migration or population loss, if relevant; data demonstrating underemployment, that is, employment of workers at less than full-time or at less skilled tasks than their training or abilities permit, if relevant; information regarding military base closures or realignments, defense contractor reductions-in-force, or U.S. Department of Energy defense-related funding reductions, if relevant; local natural or other major disasters or emergencies, if relevant; information regarding extraordinary depletion of natural resources, if relevant; closure or restructuring of industrial firms and negative effects of changing trade patterns, if relevant; whether you are located in a President-Declared Disaster area (declared within 18 months of the submission date for your proposal); whether you have exhausted effective taxing (for governmental entities only) and borrowing capacity.

Where available, applicants must supply data derived from the most recent American Community Survey (“ACS”) published by the U.S. Census Bureau. In cases where such data is not available, applicants may provide data from other sources (including data available from the Census Bureau and the Bureaus of Economic Analysis, Labor Statistics, Indian Affairs or other

federal source). In cases where no federal data is available, applicants may submit the most recent data available through your State, Tribal or local government.

F. Community Notification

The applicant must provide the community with notice of its intent to apply for an EPA brownfields grant and an opportunity to submit comments. In addition, the applicant must provide a summary of the comments and its response to the comments to EPA for the agency to consider prior to awarding the grant. Furthermore, the applicant must hold a public meeting to discuss the draft proposal and to consider public comments.

Specifically, you must place an ad (or equivalent) in your local newspaper that covers the area targeted by your proposal at least two weeks prior to the submittal date (insert date by which the ad must be placed). Your ad must clearly indicate that a copy of this grant proposal is available for public review by indicating in your ad where the draft proposal is located (e.g. town hall library, website). Your ad must indicate that you will accept comments on the draft proposal. Your ad must also announce the date and time of a public meeting that you must hold prior to submittal of this draft.

The ad and the meeting must be current and related to this specific proposal being submitted for consideration. Failure to demonstrate community notification will result in failure of this proposal. Applicants who are submitting more than one proposal may plan to have a single community notification ad and meeting. However, all targeted communities must receive the

notification and be provided an opportunity to comment on the proposal(s) relevant to their community.

Attach to this proposal:

1. A copy of the ad (or equivalent) that demonstrates notification to the public and solicitation for comments on the proposal(s).
2. The comments or a summary of the comments received.
3. Your response to the public comments.
4. Meeting notes and sign in sheet(s) from the public meeting(s).

SECTION IV - PROPOSAL SUBMISSION INSTRUCTIONS

A. How to Obtain a Proposal Package

Electronic copies of these guidelines can be obtained from the EPA brownfields web site (<http://www.epa.gov/brownfields/applicat.htm>), or through www.grants.gov. Hard copies may be requested by contacting your Regional Brownfields Contact listed in *Appendix 1*.

In accordance with EPA's Assistance Agreement Competition Policy (EPA Order 5700.5A1), EPA staff will not meet with individual applicants to discuss draft proposals, provide informal comments on draft proposals, or provide advice to applicants on how to respond to ranking criteria. Applicants are responsible for the contents of their proposals. However, EPA staff will

respond to questions regarding threshold eligibility criteria, administrative issues related to the submission of the proposal, and requests for clarification about the announcement.

B. Due Date and Mailing Instructions

Proposals are due [at a date to be determined], 2008. Applicants may submit their proposals through the U.S. Postal Service, commercial delivery service, or electronically through www.grants.gov – only one method should be used for the submission of the original, complete proposal. Facsimile delivery of proposals and e-mailed submissions are not permitted and will not be considered.

1. Hard Copy Submissions

Proposals sent through the U.S. Postal Service or a commercial delivery service must be postmarked by [at a date to be determined], 2008. *Two copies of the complete proposal are required.*

Mail one copy to:

Environmental Management Support, Inc.

Attn: Mr. Don West

8601 Georgia Avenue, Suite 500

Silver Spring, MD 20910

Phone 301-589-5318

(Note: Overnight mail must include Mr. West's phone number in the address.)

A second complete copy of the proposal must be mailed to the appropriate EPA Regional Brownfields Contact listed in *Appendix 1*.

Proposals postmarked by the USPS/commercial delivery service after [at a date to be determined], 2008 will not be considered.

2. Electronic Submissions

Proposals sent electronically through grants.gov must be received by grants.gov by 11:59 p.m. Eastern Time on [a date to be determined], 2008. Proposals received after 11:59 p.m. Eastern Time on [a date to be determined], 2008 will not be considered. Refer to *Appendix 3* for specific instructions for use of grants.gov. In the event that an applicant experiences difficulties transmitting its proposal(s) through grants.gov, please refer to the procedures in *Appendix 3*. *Note: There is a registration process to complete for electronic submission via grants.gov, which may take a week or more to complete.*

In addition to electronic submission through grants.gov, a complete copy of the proposal must be mailed to appropriate EPA Regional Brownfields Contact listed in *Appendix 1*.

Proposals received by EPA may be subject to the Freedom of Information Act; therefore, in accordance with 40 CFR 2.203, applicants may claim all or a portion of their proposal package as confidential business information. EPA will evaluate confidentiality claims in accordance

with 40 CFR Part 2. Applicants must clearly mark proposals or portions of proposals they claim as confidential. If no claim of confidentiality is made, EPA is not required to make the inquiry to the applicant otherwise required by 40 CFR 2.204(c)(2) prior to disclosure.

C. Content and Form of Proposal Submission

Applicants may submit up to three site-specific cleanup grant proposals. Each proposal must stand on its own merits based on the responses given to the relevant threshold and ranking criteria and must not reference responses to criteria in another proposal. *Applicants who exceed the maximum number of proposals allowable for cleanup grants will be contacted, prior to review of any of the proposals by EPA, to determine which proposals the applicant will withdraw from the competition.*

1. All proposals must substantially conform to the following outline and content (c-h are considered attachments to the narrative proposal). Only required attachments are allowed, no others will be considered.
 - a. Transmittal Letter (2 pg limit)
 - b. The narrative proposal which includes the responses to applicable threshold and ranking criteria (18 pg limit)
 - c. Letter from the state or tribal environmental authority
 - d. Letters of support from all community based organizations identified as partners in your proposal

- e. Documentation of community notification, including copies of comments received and your organization's responses to those comments
 - f. Documentation of non-profit status, if applicable
 - g. Documentation of applicant eligibility if other than city, county, state, or tribe;
 - h. Justification for Cleanup cost share waiver, if applicable
 - i. Property-specific determination request, if applicable
2. Narrative Proposal: The narrative proposal must be typed, on 8 ½" x 11" paper, with a font size no smaller than 12 point. The transmittal letter, including applicant identification information, shall not exceed 2 pages. The narrative proposal shall not exceed 18 pages. Any pages submitted over the page limit will not be evaluated.
- a. Transmittal Letter: The transmittal letter shall identify the applicant and a contact for communication with EPA. The transmittal letter must be written on your organization's official letterhead, and signed by an official with the authority to commit your organization to the proposed project. *Applicants are to submit SEPARATE transmittal letters for EACH proposal they submit.* Each transmittal letter must also include:
 - 1. Applicant Identification: Provide the name and full address of the entity applying for funds. This is the agency or organization that will be receiving the grant and will be accountable to EPA.

2. Funding Requested:
 - i. Grant type: Assessment, RLF, or Cleanup
 - ii. Amount: \$_____ (please refer to funding limitations for each grant type)
 - iii. Contamination: Hazardous Substances, Petroleum, or both
3. Location: City, county, and state or reservation, tribally owned lands, tribal fee lands, etc., of the brownfields community that you propose to serve.
4. Property Name and complete site address including zip code.
5. Contacts: Please provide name, phone/fax numbers, email address, and mailing address of the project director and head of organization/executive director responsible for the project proposal. These individuals may be contacted if other information is needed. Also include the names, addresses, phone and fax numbers of the mayor, county executive, governor, tribal chair, etc., for the brownfields communities that you propose to serve.
6. Date Submitted: Date proposal is submitted to EPA via U.S. Postal Service, commercial delivery service, or electronically through grants.gov.
7. Project Period: Project period must not exceed three years.
8. Population:

- a. Provide the general population of your jurisdiction and the jurisdictions of any coalition partners.
 - b. If you are not a municipal form of government, provide the population of the target area addressed by this proposal. Tribes must provide the number of tribal/non-tribal members affected. Your jurisdiction's population can be found at: <http://www.census.gov>
9. Cooperative Partners: Provide names and phone numbers of individuals and organizations that have agreed to participate in the implementation of your project.
- b. Responses to all threshold and ranking criteria. Proposals must be clear, concise and specifically address all of the applicable threshold and ranking criteria. Responses to the criteria must include the criteria number and title but need not restate the entire text of the criteria. Proposals must provide sufficient detail to allow for an evaluation of the merits of the proposal. Factual information about your proposed project and community must be provided. Do not include discussions of broad principles that are not specific to the proposed work or project covered by your proposal.

Applicants are strongly advised to avoid submission of non-essential materials unrelated to the proposal's requirements. Upon receipt, proposals will be reviewed for content and copied for distribution to evaluators. Pages exceeding the maximum page limit will not be copied or

evaluated. The maximum page limit for the narrative proposal does not include required attachments identified in Section IV, C 1. c-h, above. All proposal materials must be in English. Do not include binders, spiral binding, or color printing. Photos and graphics will not be considered.

D. Intergovernmental Review

In accordance with Executive Order 12372, EPA encourages applicants to contact their State Intergovernmental Review Office early so that the required intergovernmental review process may begin immediately upon selection by EPA. If the state does not have an Intergovernmental Review Office, the successful applicant must provide notice of the proposed agreement directly to affected state, area-wide, regional, and local entities. Contact your Regional Brownfields Contact in *Appendix 1* for assistance, if needed.

E. Use of Funds to make Subawards, Contract Services or Fund Partnerships

EPA awards funds to one eligible applicant as the “recipient” even if other eligible applicants are named as “partners” or “co-applicants” or members of a “coalition” or “consortium.” The recipient is accountable to EPA for the proper expenditure of funds.

Funding may be used to provide subgrants or subawards of financial assistance, which includes using subawards or subgrants to fund partnerships, provided the recipient complies with applicable requirements for subawards or subgrants including those contained in 40 CFR Parts

30 or 31, as appropriate. Applicants must compete contracts for services and products and conduct cost and price analyses to the extent required by the procurement provisions of these regulations. The regulations also contain limitations on consultant compensation. While applicants are not required to identify contractors or consultants in their proposal, if they do so the fact that an applicant selected for award has named a specific contractor or consultant in the proposal EPA selects does not relieve the applicant of its obligations to comply with competitive procurement requirements. Please note that applicants may not award sole source contracts to consulting, engineering or other firms assisting applicants with the proposal solely based on the firm's role in preparing the proposal.

Successful applicants cannot use subgrants or subawards to avoid requirements in EPA grant regulations for competitive procurement by using these instruments to acquire commercial services or products from for-profit organizations to carry out its assistance agreement. The nature of the transaction between the recipient and the subawardee or subgrantee must be consistent with the standards for distinguishing between vendor transactions and subrecipient assistance under Subpart B Section 210 of OMB Circular A-133, and the definitions of “subaward” at 40 CFR 30.2(ff) or “subgrant” at 40 CFR 31.3, as applicable. EPA will not be a party to these transactions.

F. Evaluation of Subawardees or Contractors

Section V of these guidelines describes the evaluation criteria and evaluation process that will be used by EPA to make selections under this announcement. During this evaluation, except for

those criteria that relate solely to the applicant's qualifications, past performance, and reporting history, the review panel will consider (to the extent applicable under any relevant criteria) the qualifications, expertise, and experience of:

1. An applicant's proposed subawardees/subgrantees identified in the proposal if the applicant demonstrates in the proposal that the subaward/subgrant will be properly awarded consistent with the applicable regulations.
2. An applicant's proposed contractors if the applicant's proposal demonstrates that the contractor was selected in compliance with the competitive Procurement Standards in 40 CFR Part 30 or 40 CFR 31.36.

SECTION V - PROPOSAL SELECTION REVIEW INFORMATION & RANKING CRITERIA

A. Review and Selection Process

Proposals will initially be reviewed by the appropriate EPA regional office to determine compliance with the applicable threshold eligibility criteria for Cleanup grants. Applicants deemed ineligible for funding consideration as a result of the threshold eligibility review will be notified within 15 calendar days. All proposals that meet the applicable threshold criteria will then be evaluated by national panels chosen to address the range of activities associated with the National Brownfields Program. The evaluation panels are composed of EPA staff and other

federal agency representatives. Regional offices will not participate on ranking review panels for applicants within their Region. Reviewers will base their evaluations solely on the responses to the applicable ranking criteria and will assign a total point score to each proposal.

EPA Regions will provide information to the evaluation panels on an applicant's response to the "Programmatic Capability" ranking criterion. This information may take into account the Regional EPA Office's experience, if any, with the applicant's performance on grants managed by the Region. When evaluating applicants under the programmatic capability criterion, EPA will consider information supplied by the applicant and may consider information from other sources including agency files and prior grantors (e.g., to verify and/or supplement the information provided by the applicant).

Completed evaluations will then be referred to a Selection Official, who is responsible for further consideration of the proposals and final selection of grant recipients. Proposals will be selected for award by this Official based on their evaluated point scores, the availability of funds, and consideration of, if any, Other Factors, described below. Applicants selected to receive a cleanup grant must obtain sole ownership of the property by June 30, 2009 or they will be ineligible for award. Subject to the availability of funds, EPA may then select other applicants from the ranked list who can demonstrate ownership of the property by June 30, 2009.

B. Will proposals be partially funded?

In appropriate circumstances, EPA reserves the right to partially fund proposals by funding discrete portions or phases of proposed projects. To maintain the integrity of the competition and

selection process, EPA, if it decides to partially fund a proposal, will do so in a manner that does not prejudice any applicants or affect the basis upon which the proposal, or portion thereof, was evaluated and selected for award.

C. Other Factors

In making final selection recommendations, EPA's Selection Official may consider the following factors; however EPA does not necessarily look more favorably upon proposals addressing these factors:

- fair distribution of funds between urban and non-urban areas;
- fair geographic distribution of funds between EPA's ten Regions;
- fair distribution of funds between new applicants and previous brownfields grant recipients;
- compliance with the statutory petroleum funding allocation;
- the benefits of promoting the long-term availability of funds under the RLF grants;
- whether the applicant is a federally recognized Indian tribe or U.S. territory;
- consideration of the type of contamination being addressed such as whether a site is mine-scarred or contaminated with controlled substances

D. Ranking Criteria for Cleanup Grants

Cleanup grants provide funding for a grant recipient to carry out cleanup activities at brownfield sites. The performance period is 3 years for cleanup grants. For a complete list of grant and programmatic requirements refer to Section VI.

Applicants may apply for funding cleanup activities at up to three sites. A separate proposal must be submitted for each site.

Funds may be used to clean up sites contaminated by petroleum or hazardous substances, (including hazardous substances co-mingled with petroleum). An applicant applying for both hazardous substance and petroleum cleanup funding at the same site must submit ONE proposal, which can not exceed \$200,000 total.

Ownership Requirement

An applicant must be the sole owner of the site that is the subject of its cleanup grant proposal to receive a cleanup grant. An applicant who is not the sole owner of the site at time of application must obtain sole ownership by June 30, 2009 or will be ineligible for funding. For the purposes of eligibility determinations in these guidelines only, the term “own” means fee simple title evidenced by a recorded deed on or before the June 30, 2009 deadline. The grantee must maintain sole ownership of the site until the grant is closed out.

Assessment Requirement

A written ASTM E1527-05 or equivalent Phase I report or a written report prepared in compliance with the All Appropriate Inquiries Final Rule (70 FR 66070) must be completed prior to purchase. In the case of properties purchased prior to November 1, 2006, a written Phase I report completed in compliance with ASTM E1527-00 or equivalent is sufficient. In addition, the applicant must have an ASTM E1903-97 Phase II site assessment report or equivalent site

investigation report completed prior to proposal submission. Equivalent reports would include site investigations or remedial action plans developed for a state cleanup program or Office of Surface Mining surveys for mine scarred lands. Provide the date of the Phase I report and the date(s) of the report(s) for the Phase II assessment or equivalent investigation.

Proposal and Funding Information for Cleanup Grants

An applicant may apply for cleanup funding if:

1. Funds are used to cleanup sites contaminated by petroleum or hazardous substances, pollutants or contaminants.
2. Funds are used to cleanup sites contaminated by hazardous substances co-mingled with petroleum.

Cleanup Funding

1. An applicant may request up to \$200,000 in hazardous substance (including hazardous substances co-mingled with petroleum) funding per site or \$200,000 in petroleum funding per site.

Note: An applicant requesting both hazardous substance and petroleum cleanup funding at the same site must submit ONE proposal, which can not exceed \$200,000 total.

Ranking Criteria for Cleanup Grants

Directions

Respond to the ranking criteria written below. Only those proposals that meet all of the threshold criteria will be evaluated against the ranking criteria.

I. COMMUNITY NEED

Describe your targeted community.

EPA will evaluate responses describing the health, welfare, environmental and financial needs of the targeted community resulting from the presence of brownfields. Specifically identify the sources of information or examples used in this section. You will be evaluated based on the examples you provide. [15 Points]

1. Health, Welfare & Environment

- Describe the effect brownfields currently have on your targeted community by providing information on their number and size of the brownfields and the health, welfare and environmental impacts of these sites.

- Provide information describing the health and welfare of sensitive populations such as minorities, children, and women of child-bearing age in the targeted communities. Provide any information or data showing residents of the targeted communities are disproportionately impacted by environmental problems.

2. Financial Need

- Describe the economic impact of brownfields on the targeted community. Provide information about that community such as rates of poverty, household income, unemployment rate or other widely available demographic information that demonstrates the economic needs of the targeted community's residents.
- Describe factors such as fiscal condition or population size that limit the applicant organization's ability to draw on other sources of funding for cleanups of brownfield sites. If you already have a brownfield grant(s) from EPA describe why you need additional funding.

II. PROJECT DESCRIPTION and FEASIBILITY OF SUCCESS

Under this section, proposals will be evaluated on the feasibility of the project to be funded under this grant. Specifically, proposals will be evaluated on whether the applicant demonstrates a reasonable approach to the project and demonstrates sufficient resources and a capability to complete the project in a timely manner. Proposals that can demonstrate firm commitments for additional funding for cleanup, will be viewed more favorably. Proposals that demonstrate the site has been sufficiently characterized to allow for cleanup planning will be viewed more favorably than those who cannot demonstrate cleanup readiness. *See Section VI. F., Programmatic Requirements, to read EPA expectations of projects funded with brownfields cleanup grants.* [45 Points]

1. Project Description

- Describe the project you are applying for to be funded under this grant.
- Describe the proposed cleanup plan and potential end use for the site.

2. Budget for EPA Funding and Leveraging Other Resources

- Use the table format below to identify specific tasks for which EPA funding will be used; the costs associated with each task and outputs produced as a result of each task. (Please see page 4 for a definition and examples of outputs.) In addition to the budget table, describe each task in detail and project quantitative results where possible (e.g. 5 tank pulls at a cost of \$13,000 per tank for a total of \$65,000).

Do not include tasks for activities or costs that are not eligible expenses under EPA's grant (e.g., land acquisition, building demolition, building or site prep, or administrative costs, such as indirect costs). Please refer to FAQs [web site to be determined] for a complete list of ineligible uses of funds.

Reminder on additional use of grant funds: A local government (does not include state or tribal governments) may use up to 10 percent of its grant funds for health monitoring of populations, monitoring and enforcement of institutional control(s) or other related program development and implementation activities.

- *Tasks and Budget for EPA Funds* – These are only examples, applicants may wish to identify other tasks and/or outputs.

Task	Cost Share	Haz-Sub Dollars	Petro Dollars	Anticipated Outputs
ABCA	\$			# of reports
Remediation				
Tank Pulls				# tanks
Community involvement				# public meetings # brochure produced # newsletters
Cooperative Agreement Oversight				# Quarterly reports # Property Profiles
Total				

- *Leveraging*. If you determine that additional work (e.g. cleanup) may be required, describe the funding or resources (public and private) you have or will seek to complete it. Describe other sources of funding or resources that you have or are seeking to ensure the successful revitalization of the brownfields property cleaned up with this grant.

3. Programmatic Capability

If the applicant currently or has ever received an EPA brownfields grant, please respond to question a. If the applicant has never received an EPA brownfields grant, please respond to question b. In evaluating an applicant's response, EPA may also consider relevant information from EPA files or from other Federal grantors to verify or supplement information provided by the applicant.

a. *Currently or Has Ever Received an EPA Brownfields Grant*

1. Demonstrate your ability to manage and successfully perform all phases of work under previous or existing cooperative agreement(s) by providing:
 - Funds Expenditure: the balance of grant funds not drawn down (funds remaining).

- Compliance with grant requirements: information regarding your compliance with the work plan, schedule, terms and conditions and timely reporting (e.g., quarterly reports, financial status reports, ACRES and any other required submittals).
- Accomplishments: Describe your success using EPA grant funds to assess, cleanup and redevelop brownfield sites.

2. Describe any adverse audit findings.

3. If you have had problems with the management of your brownfield grants (e.g. compliance reporting, expenditure of funds, etc) please describe how you have or are correcting the problems.

b. ***Never Received an EPA Brownfields Grant***

1. Describe your ability to manage this cooperative agreement and successfully perform all phases of work under this cooperative agreement

2. Describe your staff expertise/qualifications or the system(s) you have in place to acquire the requisite expertise and resources required to perform the proposed project.

3. Describe the last 3 years of your history of managing federal and state funds (or other funding sources, such as foundation grants), including any audit findings. If you have had problems with the administration of any grants (e.g. compliance reporting, expenditure of funds etc), please describe how you have or are correcting the problems.

III. COMMUNITY ENGAGEMENT & PARTNERSHIPS

Under this section the proposal will be evaluated on the applicant's plan for engaging the targeted community in the project as described above; whether the applicant has identified and established relationships with the partners necessary to achieve the project's goals; and whether the support letters have demonstrated the unique commitments of community based organizations. [15 Points]

1. Discuss your plan for involving the affected community (e.g., neighborhood organizations, citizens' groups, borrowers, redevelopers, and other stakeholders) in cleanup decisions or reuse planning, including activities that have already occurred. Describe your plan for communicating the progress of your project to citizens, including plans for communicating in languages indigenous to the community.
2. Describe your efforts and/or plans to develop partnerships with your local/state/tribal environmental and health agencies and other relevant governmental agencies to ensure your brownfields project is successful. *[Refer to EPA partnering requirements outlined on pg21.]*
3. Provide a description and role of the key community-based organizations involved in your project. These organizations may include, but are not limited to, local citizen or business groups, environmental or civic organizations, educational institutions, and local labor organizations. [Note: Community-based organizations do not include local government

departments, the local planning department/district/office, local contractors, the mayor's office or other elected officials.] Attach letters from all community-based organizations mentioned that describes their role and affirms any referenced commitments.

IV. PROJECT BENEFITS

Under this section the proposal will be evaluated on the extent to which the project's anticipated outcomes promote general welfare through the improvement of public health and safety, the economy and the environment of the targeted community and how these outcomes will contribute to your overall community "vision" for the revitalization of brownfield sites. *[Refer to page 4 for a definition of outcomes.]* [25 Points]

1. Welfare and/or Public Health.

- Describe the environmental, social and/or public health benefits anticipated from the redevelopment of the site cleaned up under this grant. During work conducted at the site, describe how nearby and sensitive populations in your targeted community will be protected from contaminants on the brownfield site cleaned up under this grant.










2. Economic Benefits and/or Green Space.

- Explain how the grant will produce:
 - a. economic benefits, such as increased employment and expanded tax base, upon the redevelopment of the site cleaned up under this grant. Provide quantitative estimates where feasible; and/or

- b. other non-economic benefits associated with site reuse for green space or other not-for-profit activities. Green space includes areas redeveloped for such uses as parks, recreation areas, greenways, or environmental buffers. Other not-for-profit activities include the work of governmental or charitable organizations.

3. Infrastructure Reuse/ Sustainable Reuse/Environmental Benefits. Describe any anticipated environmental benefits, beyond the remediation of contaminants, associated with the *sustainable redevelopment* of the site cleaned up under this grant including the use of existing infrastructure, such as utilities and public transit. Explain how this grant will support EPA initiatives such as Construction & Demolition recycling and Green Cleanups.

Proposal Checklist for Cleanup Grants. Before you submit your proposal(s) for a Cleanup grant, please ensure the following documents are included in your package submitted to EPA and EPA's contractor.

 Transmittal Letter (2 pgs maximum)	
 Narrative proposal – responses to threshold and ranking criteria (18 pgs maximum)	
 Letter from state or tribal environmental authority	
 Documentation of Community Notification and Responses to Comments	
 Letters of support from all community based organizations identified in proposal	
 Documentation of applicant eligibility, if applicable	
 Cost Share waiver request, if applicable	
 Documentation of non-profit status, if applicable	
 Property specific determination request, if applicable	

SECTION VI - AWARD ADMINISTRATION INFORMATION

A. Award Notices

EPA Regions will notify applicants who fail threshold eligibility requirements within 15 calendar days of the Agency's determination of ineligibility. The Agency will notify applicants who have not been selected for award based on the ranking criteria and other factors within 15 calendar days of EPA's final decision on selections for this competition.

EPA anticipates notification to successful applicants will be made via telephone, or electronic or postal mail by Spring 2009. The notification will be sent to the original signer of the proposal or the project contact listed in the proposal. This notification, which informs the applicant that its proposal has been selected and is being recommended for award, is not an authorization to begin work. The successful applicant must prepare a work plan and submit application forms, which must be approved by EPA, before the cooperative agreement can officially be awarded. The award notice, signed by an EPA grants officer, is the authorizing document and will be provided through postal mail. The time between notification of selection and award of cooperative agreement can take up to 90 days or longer.

B. Administrative and National Policy Requirements

1. Funding will be awarded as a cooperative agreement. The applicants whose proposals are selected will be asked to submit a cooperative agreement application package to their EPA Regional office. This package will include the application (Standard Form 424), a proposed

work plan, a proposed budget, and other required forms. An EPA Project Officer will work with you to finalize the budget and work plan.

2. Cooperative agreements permit the EPA Project Officer to be substantially involved in overseeing the work performed by the selected recipients. Although EPA will negotiate precise terms and conditions relating to substantial involvement as part of the award process, the anticipated substantial Federal involvement for this project may include:
 - close monitoring of the recipient's performance to verify the results;
 - collaboration during performance of the scope of work;
 - approving substantive terms of proposed contracts;
 - approving qualifications of key personnel (EPA will not select employees or contractors employed by the award recipient);
 - review and comment on reports prepared under the cooperative agreement (the final decision on the content of reports rests with the recipient).
 - Review of sites as meeting applicable site eligibility criteria
3. Cooperative agreements approved under this final selection step will include terms and conditions that will be binding on the grant recipient. Terms and conditions specify what grantees must do to ensure that grant-related and Brownfields program-related requirements are met. Applicants will also be required to submit progress reports in accordance with grant regulations found in 40 CFR 30.51 or 40 CFR 31.40. A listing and description of general

EPA regulations applicable to the award of assistance agreements may be viewed at

http://www.epa.gov/ogd/AppKit/applicable_epa_regulations_and_description.htm.

4. All applicants are required to provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for a federal grant or cooperative agreement. Applicants can receive a DUNS number, at no cost, by calling the dedicated toll-free DUNS number request line at 1-866-705-5711 or visiting the D&B website at <http://www.dnb.com>.

C. Reporting Requirements

During the life of the cooperative agreement, recipients are required to submit progress reports to the EPA Project Officer within thirty days after each reporting period. The reporting period (i.e., quarterly, annually) is set forth in the terms and conditions of the cooperative agreement. These reports shall cover work status, work progress, difficulties encountered, an accounting of financial expenditures, preliminary data results, anticipated activities and any changes of key personnel involved with the project. Additionally, recipients will be required to report site specific accomplishments on Property Profile Forms and preferably submit them electronically to EPA's ACRES reporting system.

At the end of the cooperative agreement, a final project report is also required. The final report will summarize accomplishments, expenditures, outcomes, outputs, lessons learned, any other resources leveraged during the project and how they were used.

D. Disputes

Disputes related to this competition will be resolved in accordance with the dispute resolution procedures published in 70 FR (Federal Register) 3629, 3630 (January 26, 2005), which can be found at <http://www.epa.gov/ogd/competition/resolution.htm>. Copies of these procedures may also be requested by contacting the Agency contact identified in Appendix 1 of this announcement.

E. Pre-Award Administrative Capability Review for Non-Profits

Non-profit applicants that are recommended for funding under this announcement are subject to pre-award administrative capability reviews consistent with Section 8b, 8c, and 9d of EPA Order 5700.8 – *Policy on Assessing Capabilities of Non-Profit Applicants for Managing Assistance Awards*, http://www.epa.gov/ogd/grants/award/5700_8.pdf. In addition, non-profit applicants that qualify for funding may, depending on the size of the award, be required to fill out and submit to the Grants Management Office the Administrative Capabilities Form with supporting documents contained in Appendix A of EPA Order 5700.8.

F. Brownfields Programmatic Requirements

Brownfields grantees must comply with all applicable Federal and State laws to ensure that the assessment and cleanup protects human health and the environment. Brownfield grantees must

also comply with the program's technical requirements which may include, but are not limited to, the following:

Quality Assurance (QA) Requirements

When environmental samples are collected as part of any brownfield cooperative agreement (e.g. assessment and site characterization, cleanup verification sampling, post-cleanup confirmation sampling), recipients shall submit to EPA for approval a Quality Assurance Project Plan (QAPP) prior to the collection of environmental samples. The QAPP must document quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. Compliance with the Quality Assurance requirements is an eligible cost for all three grant types.

Historic Properties or Threatened and Endangered Species

If historic properties or threatened or endangered (T&E) species may be impacted by the assessment or cleanup of a site, the requirements of the National Historic Preservation Act (NHPA) or the Endangered Species Act (ESA), may apply, respectively. Grantees are required to consult with EPA prior to conducting any on-site activity (such as invasive sampling or cleanup) that may affect historic properties or T&E species to ensure that the requirements of Section 106 of NHPA and Section 7(a)(2) of the ESA are met. Assessment grantees that expect to conduct cleanup work on eligible brownfields sites should plan for these consultation requirements.

Environmental Cleanup Responsibilities

Cleanup and RLF grant recipients must complete the following mandatory activities in connection with cleanups conducted with brownfield funding. These activities are all eligible costs.

While the following uses specific terms, EPA anticipates that the majority of the cleanups will be performed through state voluntary cleanup programs (VCPs). As such, the state programs may call these documents by different names. It is EPA's intent that documents generated to meet the state's VCP requirements can serve to meet the mandatory requirements listed below as long as they cover the same elements and include the necessary information.

1. Analysis of Brownfield Cleanup Alternatives (ABCA)

Prepare an analysis of brownfield cleanup alternatives, considering site characteristics, surrounding environment, land-use restrictions, potential future uses, and cleanup goals. The ABCA must be signed by an authorized representative of the recipient and ABCA must include:

- Information about the site and contamination issues (e.g., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup.
- Effectiveness, implementability, and the cost of the proposed cleanup.

- An analysis of reasonable alternatives including no action. For cleanup of brownfield petroleum-only sites, an analysis of cleanup alternatives must include considering a range of proven cleanup methods including identification of contaminant sources, exposure pathways, and an evaluation of corrective measures. The cleanup method chosen must be based on this analysis.

2. Community Relations and Public Involvement in Cleanup Activities

Recipients must prepare a site-specific community relations plan describing how the recipient plans to satisfy the public involvement requirements below. The plan must be submitted to EPA before providing notice regarding the ABCA. At a minimum, public involvement for cleanup activities requires:

- Notice of the ABCA's or its equivalent's availability to the general community and the opportunity for the public to provide comments (written or oral) on the ABCA
- Preparation of written responses to significant and appropriate comments, and documentation of any changes to the cleanup plan.
- Preparation of an administrative record and notification to the public of its availability for inspection at a location convenient to the targeted population and general public. The administrative record must contain the documents that form the basis for the selection and implementation of a cleanup plan. Documents in the administrative record shall include the ABCA; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanups are complete.

3. Implementation and Completion of Cleanup Activities

Recipients shall ensure the adequacy of each cleanup in protecting human health and the environment as it is implemented. Regarding occupational safety and health, brownfields cleanups must comply with either all applicable General Industry standards (29 C.F.R. Part 1910) or all applicable Construction standards (29 C.F.R. Part 1926), depending on work operations at the site. In addition, if a site is determined to be a “hazardous waste site,” that site must comply with the Hazardous Waste Operations and Emergency Response (HAZWOPER) standard 29 C.F.R. § 1910.120.

In the event of an incomplete cleanup, the recipient shall ensure that the site is secure and notify the appropriate state agency and the U.S. EPA to ensure an orderly transition should additional activities become necessary.

Recipients shall ensure that the successful completion of the cleanup is properly documented. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows cleanup is complete. This documentation needs to be included as part of the administrative record.

Collection of Post Grant Information

Under the Government Performance and Results Act, EPA reports on the many benefits of Brownfields funding. One such measure provides information on additional resources leveraged as a result of the Brownfields grant funds provided. These non-EPA funds may include

additional cleanup funds, or redevelopment funding from other federal agencies, state, tribal, and local governments, or private organizations. As many of these activities occur beyond the grant period, please note that EPA may contact you well after the grant period of performance to collect this information.

Appendix 1 Regional Coordinators

REGION & STATES		ADDRESS/PHONE NUMBER/EMAIL
EPA Region 1 Diane Kelley Kelley.Diane@epa.gov	CT, ME, MA, NH, RI, VT	One Congress Street Suite 1100 Boston, MA 02114-2023 Phone (617) 918-1424 Fax (617) 918-1291
EPA Region 2 Ramon Torres Torres.Ramon@epa.gov	NJ, NY, PR, VI	290 Broadway 18th Floor New York, NY 10007 Phone (212) 637-4309 Fax (212) 637-4360
EPA Region 3 Tom Stolle Stolle.Tom@epa.gov	DE, DC, MD, PA, VA, WV	1650 Arch Street Mail Code 3HS51 Philadelphia, Pennsylvania 19103 Phone (215) 814-3129 Fax (215) 814-5518
EPA Region 4 Mike Norman Norman.Michael@epa.gov	AL, FL, GA, KY, MS, NC, SC, TN	Atlanta Federal Center 61 Forsyth Street, S.W. 10TH FL Atlanta, GA 30303-8960 404.562.8792 (w) 404.562.8439 (fax)
EPA Region 5 Deborah Orr Orr.Deborah@epa.gov	IL, IN, MI, MN, OH, WI	77 West Jackson Boulevard Mail Code SE-4J Chicago, Illinois 60604-3507 Phone (312) 886-7576 Fax (312) 886-7190
EPA Region 6 Monica Chapa Smith Smith.Monica@epa.gov	AR, LA, NM, OK, TX	First Interstate Bank Tower at Fountain Place 1445 Ross Avenue, Suite 1200 (6SF-PB) Dallas, Texas 75202-2733 Phone (214) 665-6780 Fax (214) 665-6660
EPA Region 7 Susan Klein Klein.Susan@epa.gov	IA, KS, MO, NE	901 N. 5th Street Kansas City, Kansas 66101 Phone (913) 551-7786 Fax (913) 551-8688
EPA Region 8 Dan Heffernan Heffernan.Daniel@epa.gov	CO, MT, ND, SD, UT, WY	1595 Wynkoop Street (EPR-B) Denver, CO 80202-1129 Phone (303) 312-7074 Fax (303) 312-6067
EPA Region 9 Debbie Schechter (Acting) Schechter.Debbie@epa.gov	AZ, CA, HI, NV, AS, GU	75 Hawthorne Street, SFD 9-1 San Francisco, California 94105 Phone (415) 972-3093 Fax (415) 947-3520
EPA Region 10 Susan Morales Morales.Susan@epa.gov	AK, ID, OR, WA	1200 Sixth Avenue Seattle, Washington 98101 Phone (206) 553-7299 Fax (206) 553-0124

Appendix 2

Information on Sites Eligible for Brownfields Funding

Under CERCLA §104(k)

3.1 Introduction

The information provided in this appendix will be used by EPA in determining the eligibility of any property for brownfields grant funding. The Agency is providing this information to assist you in developing your proposals for funding under CERCLA §104(k) and to apprise you of information that EPA will use in determining the eligibility of any property for brownfields grant funding.

This information is used by EPA solely to make applicant and site eligibility determinations for Brownfields grants and is not legally binding for other purposes including Federal, state or tribal enforcement actions.

3.2 General Definition of Brownfield Site

The Brownfields Law defines a “Brownfield Site” as:
“...real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”
Brownfield sites include all “real property,” including residential, as well as commercial and industrial properties.

3.3 Additional Areas Specifically Eligible for Funding

The Brownfields Law also identifies three additional types of properties that are specifically eligible for funding:

1. Sites contaminated by *controlled substances*.
2. Sites contaminated by *petroleum or a petroleum product*.
3. *Mine-scarred lands*.

See below for guidance on determining the scope of each of these three types of sites. Applicants should identify properties included within their funding proposals that fall within the scope of any of the following three areas.

3.3.1 Contamination by Controlled Substance

Sites eligible for funding include real property, including residential property, that is contaminated by a controlled substance. A “controlled substance” is defined under the Controlled Substances Act as “a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this title (21 USC Section 812). The term does not include distilled spirits, wine, malt beverages, or tobacco...”

For example, sites eligible for brownfields funding may include private residences, formerly used for the manufacture and/or distribution of methamphetamines or other illegal drugs where there is a presence or potential presence of controlled substances or pollutants, contaminants, or hazardous substances (*e.g.*, red phosphorous, kerosene, acids).

3.3.2 Contamination by Petroleum or Petroleum Product

Petroleum-contaminated sites must meet certain requirements to be eligible for brownfields funding. Petroleum is defined under CERCLA as “crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under that section.”

For a petroleum contaminated site(s) that otherwise meets the definition of a brownfields site to be eligible for funding, EPA or the state must determine:

1. the site is of “relatively low risk” compared with other “petroleum-only” sites in the state;
and
2. there is no viable responsible party;
3. the site will not be assessed, investigated or cleaned up by a person that is potentially liable for cleaning up the site.
4. the site must not be subject to a corrective action order under the Resource Conservation and Recovery Act (RCRA) §9003(h).

Site specific assessment or cleanup grant proposals for petroleum-contaminated sites must provide information in their proposal indicating whether the site meets each of the criteria listed above. If EPA awards an applicant a revolving loan fund grant, the state or EPA must make the same determinations for site(s) that will be cleaned up under a loan or subgrant. These criteria are explained below.

Please note that States may, but are not required, to use this guidance to determine whether sites contaminated by petroleum or petroleum products are eligible for brownfields grant funding.

States may apply their own laws and regulations, if applicable, to eligibility determinations under Section 3.3.2.

Note: A petroleum eligibility determination by the EPA or a state under CERCLA section 101(39)(D) for the purpose of brownfields funding does not release any party from obligations under any federal or state law or regulation, or under common law, and does not impact or limit EPA or state enforcement authorities against any party.

“Relatively Low Risk”:

Applicants whose brownfield site(s) include properties or portions of properties contaminated with petroleum or petroleum products must provide information in their proposal indicating that the property represents a relatively low risk (compared to other petroleum-only sites). Our view is that the following types of petroleum-contaminated sites are high risk sites, or are not of “relatively low risk.”

1. “High risk” sites currently being cleaned up using LUST trust fund monies.
2. Any petroleum-contaminated site that currently is subject to a response under the Oil Pollution Act (OPA).

Note: Any site that does not fall under any of the provisions listed above would be considered to be of relatively low risk for purposes of determining eligibility for a brownfields grant.

“A Site for Which There is No Viable Responsible Party”

EPA or the state is required to determine that there is no viable responsible party that can address the petroleum contamination at the site. If EPA, or the state, identifies a party that is responsible for the site, and that party is financially viable, then the site is not eligible for funding and EPA

cannot award the grant. This analysis is twofold -- EPA or the state must first determine whether a responsible party exists and, if a responsible party is identified, then determine whether that party is viable. Applicants must provide information in their proposal to demonstrate that the property or portion of property contaminated with petroleum or petroleum product for which they seek funding has no viable responsible party.

A petroleum-contaminated site may be determined to have no responsible party if the site was last acquired (regardless of whether the site is owned by the applicant) through tax foreclosure, abandonment, or equivalent government proceedings, and that site meets the criteria in (1) below. Any petroleum-contaminated site not acquired by a method listed above may be determined to have no responsible party if the site meets the criteria in both (1) and (2) below.

(1) No responsible party has been identified for the site through:

- (a) a judgment rendered in a court of law or an administrative order that would require any party (including the applicant) to assess, investigate, or clean up the site,
- (b) an enforcement action by federal or state authorities that would require any party (including the applicant) to assess, investigate, or clean up the site, or
- (c) a citizen suit, contribution action or other third party claim brought against the current or immediate past owner for the site that would, if successful, require the assessment, investigation, or clean up the site, and

(2) The current and immediate past owner did not dispense or dispose of, or own the subject property during the dispensing or disposal of, any contamination at the site, did not exacerbate

the contamination at the site, and took reasonable steps with regard to the contamination at the site.⁵

*For purposes of the grant program and these guidelines only, the current owner is the entity that will own the property on June 30, 2007. For cleanup grants, the current owner must be the applicant.

If no responsible party is identified above, then the petroleum-contaminated site may be eligible for funding. If a responsible party is identified above, EPA or the state must next determine whether that party is viable. If any such party is determined to be viable, then the petroleum-contaminated site is not eligible for funding.

If there is a responsible party for the site, the applicant should explain in its application what steps it took to determine a responsible party's financial status, and why the information presented indicates that the responsible party is not viable. A state making the "viable responsible party" determination for the applicant may use the standards contained in this Appendix or its own standard. If a state is not making the determination or a tribe is the applicant, EPA will follow the standard set forth in this Appendix. Note that any viability determination made by EPA is for purposes of the CERCLA Section 104(k) grant program only.

⁵ For purposes of determining petroleum brownfield grant eligibility, "reasonable steps with regard to contamination at the site" includes, as appropriate: stopping continuing releases, preventing threatened future releases, and preventing or limiting human, environmental, or natural resource exposure to earlier petroleum or petroleum product releases. Reasonable steps are discussed in more detail on pages 9-12 of EPA's March 6, 2003, "*Common Elements*" guidance.

EPA will consider a party to be viable if the party is financially capable of satisfying obligations under federal or state law to conduct the activity (*i.e.*, assessment/investigation or cleanup) identified in the grant.

Generally, EPA will consider ongoing businesses or companies (corporations, LLCs, partnerships, etc.), and government entities, to be viable. EPA will generally deem a defunct or insolvent company, and an individual responsible party, to be not viable. EPA will apply these assumptions to its petroleum grant viability determinations, unless there is information suggesting that the assumption is not appropriate in a particular case (*e.g.*, if there is information that an individual has adequate financial resources to address contamination at a site, or if there is information indicating an ongoing business is not, in fact, viable). An applicant should indicate if one of the above assumptions applies and provide support for the assertion. In circumstances not covered by one of the above assumptions, the applicant should explain why the responsible party is not viable.

An applicant seeking to determine the financial status (*i.e.*, the viability) of a responsible party should consider consulting the following resources and any other resources it may deem to be useful to make this determination:

1. Responsible Party: Ask the responsible party for its financial information (tax returns, bank statements, financial statements, insurance policies designed to address environmental liabilities, etc.), especially if the responsible party is still associated with the site or is the applicant, and therefore will receive the benefit of the grant. An applicant that is a responsible party and

claiming it is not viable should provide conclusive information, such as an INDIPAY or MUNIPAY analysis, on its inability to pay for the assessment or cleanup.

2. Federal, State and Local Records: Federal, state and local (*i.e.* county and city) records often provide information on the status of a business. An applicant that is a state or local government should at the very least search its own records for information on a responsible party. Examples of such resources include regulatory records (e.g., state hazardous waste records), Secretary of State databases, and property/land records,

3. Public and Commercial Financial Databases: Applicants may also obtain financial data from publicly-available and commercial sources. Listed below are examples of sources for financial data that applicants may consider. Please note that some commercial sources may charge fees and that EPA does not endorse the use of any specific sources, and that EPA will accept reliable data from other sources as part of a proposal for funding.

Examples of sources: Lexis/Nexus, Dunn & Bradstreet reports, Hoover's Business Information, Edgar Database of Corporate Information, Thomas Register of American Manufacturers, The Public Register, Corporate Annual Reports, internet search engines (Google; Ask).

“Cleaned Up by a Person Not Potentially Liable”:

Brownfields funding may be awarded for the assessment and cleanup of petroleum-contaminated sites provided:

- 1) the applicant has not dispensed or disposed of or owned the property during the dispensing or disposal of petroleum or petroleum-product at the site, and
- 2) the applicant did not exacerbate the contamination at the site and took reasonable steps with regard to the contamination at the site.

“Is not subject to any order issued under §9003(h) of the Solid Waste Disposal Act”

Proposals that include requests for an assessment or direct cleanup grant to address petroleum-contaminated sites must not be subject to a corrective action order under a Resource Conservation and Recovery Act (RCRA) §9003(h). If EPA awards an applicant a revolving loan fund grant, the State or EPA must make the same determination for site(s) that will be cleaned up under a loan or subgrant.

3.3.3 Mine-scarred Lands

Mine-scarred lands are eligible for brownfields funding. EPA’s view is that “mine-scarred lands” are those lands, associated waters, and surrounding watersheds where extraction, beneficiation, or processing of ores and minerals (including coal) has occurred. For the purposes of this section, the definition of extraction, beneficiation, and processing is the definition found at 40 CFR 261.4(b)(7).

Mine-scarred lands include abandoned coal mines and lands scarred by strip mining.

Examples of coal mine-scarred lands may include, but are not limited to:

- abandoned surface coal mine areas,
- abandoned deep coal mines,
- abandoned coal processing areas,
- abandoned coal refuse areas,
- acid or alkaline mine drainage, and
- associated waters affected by abandoned coal mine (or acid mine) drainage or runoff, including stream beds and adjacent watersheds.

Examples of non-coal hard rock mine-scarred lands may include, but are not limited to:

- abandoned surface and deep mines,
- abandoned waste rock or spent ore piles,
- abandoned roads constructed wholly or partially of waste rock or spent ore,
- abandoned tailings, disposal ponds, or piles,

- abandoned ore concentration mills,
- abandoned smelters,
- abandoned cyanide heap leach piles,
- abandoned dams constructed wholly or partially of waste rock, tailings, or spent ore,
- abandoned dumps or dump areas used for the disposal of waste rock or spent ore,
- acid or alkaline rock drainage, and
- waters affected by abandoned metal mine drainage or runoff, including stream beds and adjacent watersheds.

3.4 Sites Not Eligible for Brownfields Funding

The following three types of properties are not eligible for brownfields funding under the brownfields law, even on a property specific basis. Applicants should not include these types of sites in the funding proposals.

- 1) facilities listed or proposed for listing on the National Priorities List (NPL)

2) facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decrees issued to or entered into by parties under CERCLA, and
3) facilities that are subject to the jurisdiction, custody, or control of the United States government. Facilities owned by, or under the custody or control of the federal government are not eligible for brownfields funding. EPA's view is that this exclusion may not extend to:

- a. Privately-owned, Formerly Used Defense Sites (FUDS);
- b. Privately-owned, Formerly Utilized Sites Remedial Action Program (FUSRAP) properties;
and
- c. Other former federal properties that have been disposed of by the U.S. government.

Note that land held in trust by the United States government for an Indian tribe is not excluded from funding eligibility. In addition, eligibility for brownfields funding does not alter a private owner's ability to cost recover from the federal government in cases where the previous federal government owner remains liable for environmental damages.

3.5 Particular Classes of Sites Eligible for Brownfields Funding Only With Property-Specific Determinations

The following special classes of property are generally ineligible brownfield sites unless EPA makes a "Property Specific Determination":

- Properties subject to planned or ongoing removal actions under CERCLA.

- Properties with facilities that have been issued or entered into a unilateral administrative order, a court order, an administrative order on consent, or judicial consent decree or to which a permit has been issued by the U.S. or an authorized state under RCRA, FWPCA, TSCA, or SDWA.
- Properties with facilities subject to RCRA corrective action (§3004(u) or §3008(h)) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures.
- Properties that are land disposal units that have submitted a RCRA closure notification or that are subject to closure requirements specified in a closure plan or permit.
- Properties where there has been a release of PCBs and all or part of the property is subject to TSCA remediation.
- Properties that include facilities receiving monies for clean up from the LUST trust fund.

EPA's approval of Property Specific Determinations will be based on whether or not awarding a grant will protect human health and the environment and either promote economic development or enable the property to be used for parks, greenways, and similar recreational or nonprofit purposes. Property Specific Determination requests should be attached to your proposal and do not count in the 18 page limit. See *Appendix 4* for more information on how to prepare and submit a Property Specific Determination.

3.5.1 Facilities Subject to CERCLA Removal Actions

Properties (including parcels of properties) where there are removal actions may not receive funding, unless EPA makes a property-specific determination of funding eligibility.

EPA's view is that a removal may be identified by the occurrence of one of the following events, whichever occurs first in time: EPA issues an action memo; EPA issues an EE/CA approval memo; EPA mobilizes onsite; or EPA issues a notice of federal interest to one or more potentially responsible parties (PRP(s)), which in emergencies may be made verbally, or EPA takes other actions that are consistent with a removal.

Once a removal action is complete, a property is eligible for brownfields funding without having to obtain a property-specific funding determination. Our view is that, solely for the purposes of eligibility to receive brownfields funding, a removal is complete when the actions specified in the action memorandum are met, or when the contractor has demobilized and left the site (as documented in the "pollution report" or POLREP). Applicants applying for brownfields funding for sites at which removal actions are complete must include documentation of the action being complete with their funding proposal.

Parcels of facilities not affected by removal action at the same property may apply for brownfields funding and may be eligible for brownfields funding on a property-specific basis. Property-specific funding decisions will be made in coordination with the on-scene coordinator (OSC) to ensure that all removals and cleanup activities at the property are conducted in safe and protective manners and to ensure that the OSC retains the ability to address all risks and contamination.

Please note that if a federal brownfields-funded site assessment results in identifying the need for a new removal action, the grantee may continue to expend assessment grant funds on additional assessment activities. However, any additional expenditure of federal brownfield funds and any additional site assessment activities should be conducted in coordination with the OSC for the site.

3.5.2 Facilities to which a permit has been issued by the United States or an authorized state under the Solid Waste Disposal Act (RCRA), the Federal Water Pollution Control Act, the Toxic Substances Control Act, or the Safe Drinking Water Act

Generally, in cases where a property or a portion of a property is permitted under the Resource Conservation and Recovery Act, Section §1321 of the Clean Water Act, the Safe Drinking Water Act, and/or the Toxic Substances and Control Act, the property, or portion of the property, may not receive funding, without a property-specific determination. Therefore, applicants should review the following guidance regarding which types of permitted facilities may not receive funding unless EPA makes a property-specific determination to provide funding. Applicants should note that the exclusion for permitted facilities does not extend to facilities with National Pollutant Discharge Elimination System (NPDES) permits issued under the authorities of the Federal Water Pollution Control Act, but is limited to facilities issued permits under the authorities of the Oil Pollution Act (*i.e.*, §1321 of FWPCA).

In cases where one or more portions of a property are not eligible for funding, the applicant should identify the specific permit and situation that causes the property to be excluded. In addition, the applicant must include, within the proposal, documentation that federal brownfields

funding for the assessment or clean up of the property will further the goals established for property-specific funding determinations as described in Appendix 4.

In some cases, a facility may not have a permit or order because they are not in compliance with federal or state environmental laws requiring that they obtain a permit or the facility has failed to notify EPA of their regulatory status. Such facilities are not eligible for brownfields funding. For example, a RCRA treatment unit operator is required to obtain a permit and/or notify EPA of its operation. An operator that fails to fulfill those obligations will likely not have a permit or order as EPA will be unaware of their existence. Therefore, it is EPA's view that such facilities are ineligible to receive brownfields funds as a result of their failure to comply with a basic regulatory requirement. Additional guidance on the eligibility of RCRA-permitted facilities, including facilities under administrative or court orders, including corrective action orders, is provided in *Appendix 4*.

3.5.3 RCRA Sites

RCRA Facilities that are Eligible for Funding

EPA's view is that the following types of RCRA facilities are eligible for brownfields funding and do not require Property Specific Determinations:

- a. RCRA interim status facilities that are not subject to any administrative or judicial order or consent decree;

b. RCRA interim status facilities that are subject to administrative or judicial orders that do *not* include corrective action requirements or any other cleanup provisions (*e.g.*, RCRA §3008(a) orders without provisions requiring the owner/operator to address contamination); and

c. Parcels of RCRA facilities that are not under the scope of a RCRA permit or administrative or judicial order.

RCRA Facilities That Require Property Specific Determinations

EPA's view is that the following types of RCRA facilities *may not receive funding without a property-specific determination*:

a. *RCRA-permitted facilities.*

b. RCRA interim status facilities with administrative orders requiring the facility to conduct corrective action or otherwise address contamination, including facilities with orders issued under the authorities of RCRA §3008(a), §3008(h), §3013, and §7003.

c. Facilities under court order or under an administrative order on consent or judicial consent decree under RCRA or CERCLA that require the facility to conduct corrective action or otherwise address contamination at the facility.

d. Land disposal units that have notified EPA or an authorized state of their intent to close and have closure requirements specified in closure plans or permits.

3.5.4 Land disposal units that have filed a closure notification under Subtitle C of RCRA and to which closure requirements have been specified in a closure plan or permit.

RCRA hazardous waste landfills that have submitted closure notifications, as required under 40 CFR 264.112(d) or 265.112(d), generally will not be funded. This may include permitted facilities that have filed notification of closure and for which EPA and/or an authorized state is proceeding with final closure requirements for the facility. For interim status facilities, this is done through approval of a closure plan submitted with closure notification; for permitted facilities, this is routinely done as a modification to the permit, requested by the facility at the time of closure notification.

Please note that RCRA hazardous waste landfills that have submitted closure notifications may be eligible for brownfields funding with a Property Specific Determination.

3.5.5 Sites Contaminated with PCBs

The Brownfields Law excludes from funding eligibility portions of facilities where there has been a release of PCBs that are subject to remediation under TSCA.

EPA's view is that all portions of properties *are eligible* for brownfields site assessment grants, except where EPA has initiated an involuntary action with any person to address PCB contamination. Also, it is our view that all portions of properties *are eligible* for cleanup and RLF grants, except where EPA has an ongoing action against a disposer to address PCB

contamination. However, any portion of a property where EPA has initiated an involuntary action with any person to address PCB contamination and portions of properties where EPA has an ongoing action against a disposer to address PCB contamination will require a Property Specific Determination to be eligible for brownfields funding, including:

- There is a release (or disposal) of any waste meeting the definition of “PCB remediation waste” at 40 CFR 761.3; *and*
- At which EPA has initiated an involuntary action with any person to address the PCB contamination. Such involuntary actions could include:
 - Enforcement action for illegal disposal;
 - Regional Administrator’s order to characterize or remediate a spill or old disposal (40 CFR 761.50(b)(3));
 - Penalty for violation of TSCA remediation requirements;
 - Superfund removal action; or
 - Remediation required under RCRA §3004(u) or §3004(v).

PCBs may be remediated under any one of the following provisions under TSCA:

- a. Section 761.50(b)(3), the directed characterization, remediation, or disposal action.
- b. Section 761.61(a), the self-implementing provision.
- c. An approval issued under §761.61(c), the risk-based provision.
- d. Section 761.61(b) to the level of PCB quantification (i.e., 1 ppm in soil).
- e. An approval issued under §761.77, the coordinated approval provision.
- f. Section 761.79, the decontamination provision.
- g. An existing EPA PCB Spill Cleanup Policy.
- h. Any future policy or guidance addressing PCB spill clean up or remediation specifically addressing the remediation of PCBs at brownfield sites.

3.5.6 LUST Trust Fund Sites

The Brownfields Law requires a Property Specific Determination for funding at those sites (or portions of properties) for which assistance for response activity has been obtained under Subtitle I of RCRA from the LUST trust fund. EPA's view is that this provision may exclude:

- a. UST sites where money is being spent on actual assessment and/or clean up of UST/petroleum contamination.

However, in cases where the state agency has used LUST trust fund money for state program oversight activities on an UST site, but has not expended LUST trust funds for specific assessment and/or cleanup activities at the site, the site would be eligible for brownfields funding and does not need a Property Specific Determination. Such sites may receive brownfields

funding on a property-specific basis, if it is determined that brownfields funding will protect human health and the environment and the funding will promote economic development or enable the creation of, preservation of, or addition to greenspace (see guidance on documenting eligibility for property-specific funding determinations provided in *Appendix 4*).

Examples of sites receiving LUST trust fund monies that EPA we would consider to be good candidates to receive brownfields grants or loans:

- a. All USTfields pilots (50 pilots)
- b. Sites (or portions of properties) where an assessment was completed using LUST trust fund monies and the state has determined that the site is a low-priority UST site and therefore additional LUST trust fund money cannot be provided for the clean up of petroleum contamination, but the site still needs some clean up and otherwise is a good candidate for economic revitalization.
- c. Sites (or portions of properties) where LUST trust fund money was spent for emergency activities, but then the site was determined to be ineligible for further expenditures of LUST trust funds, yet the site needs additional funding for continued assessment and/or clean up that will contribute to economic revitalization of the site.

3.6 Eligible Response Sites/Enforcement Issues

The Brownfields Law limits EPA's enforcement and cost recovery authorities at "eligible response sites" where a response action is conducted in compliance with a state response program. Section 101(40) of CERCLA defines an "eligible response site" by referencing the general definition of a "brownfield site" in §101(39)(A) and incorporating the exclusions at §101(39)(B). The law places further limitations on the types of properties included within the definition of an eligible response site, but grants EPA the authority to include within the definition of eligible response site, and on a property-specific basis, some properties that are otherwise excluded from the definition. Such property-specific determinations must be based upon a finding that limits on enforcement will be appropriate, after consultation with state authorities, and will protect human health and the environment and promote economic development or facilitate the creation of, preservation, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes. While the criteria appear similar to those for determining eligibility for funding on a property-specific basis, the determinations are distinct, will be made through a separate process, and may not be based on the same information requested in this document for property-specific funding determinations.

Also, please note that in providing funding for brownfield sites, and given that a limited amount of funding is available for brownfields grants, EPA's goal is to not provide brownfields funding to sites where EPA has a planned or ongoing enforcement action. While EPA does not intend that the existence of a planned or ongoing enforcement action will necessarily disqualify a site

from receipt of brownfields funding, EPA does believe it is necessary that EPA be aware of the existence of any such action in making funding decisions. As a result, EPA will conduct an investigation to evaluate whether a site is, or will be, subject to an enforcement action under CERCLA or other federal environmental statutes. EPA is requesting that applicants identify ongoing or anticipated environmental enforcement actions related to the brownfield site for which funding is sought.

Appendix 3

Grants.gov Proposal Submission Instructions

General Application Instructions

The electronic submission of your proposal/application must be made by an official representative of your institution who is registered with Grants.gov and is authorized to sign applications for Federal assistance. For more information, go to <http://www.grants.gov> and click on “Get Registered” on the left side of the page. *Note that the registration process may take a week or longer to complete.* If your organization is not currently registered with Grants.gov, please encourage your office to designate an AOR and ask that individual to begin the registration process as soon as possible.

To begin the proposal/application process under this grant announcement, go to <http://www.grants.gov> and click on the “Apply for Grants” tab on the left side of the page. Then click on “Apply Step 1: Download a Grant Application Package” to download the compatible Adobe viewer and obtain the application package. To apply through grants.gov you must use Adobe Reader applications and download the compatible Adobe Reader version ([Adobe Reader applications are](#) available to download for free on the Grants.gov website. For more information on Adobe Reader please visit the [Help section](#) on grants.gov at <http://www.grants.gov/help/help.jsp> or http://www.grants.gov/aboutgrants/program_status.jsp).

Once you have downloaded the viewer, you may retrieve the application package by entering the Funding Opportunity Number, EPA-----, or the CFDA number that applies to the announcement (CFDA 66.---), in the appropriate field. You may also be able to access the proposal/application package by clicking on the Application button at the top right of the synopsis page for this announcement on <http://www.grants.gov> (to find the synopsis page, go to <http://www.grants.gov> and click on the “Find Grant Opportunities” button on the left side of the page and then go to Search Opportunities and use the Browse by Agency feature to find EPA opportunities).

Application/Proposal Submission Deadline: Your organization’s AOR must submit your complete proposal/application electronically to EPA through Grants.gov (<http://www.grants.gov>) no later than ----.

Please submit *all* of the proposal/application materials described below. To view the full funding announcement, go to [offices should provide the EPA url link to the full announcement so applicants can easily access it if necessary) or go to <http://www.grants.gov> and click on “Find Grant Opportunities” on the left side of the page and then click on Search Opportunities/Browse by Agency and select Environmental Protection Agency.

Proposal/Application Materials

The following forms and documents are required to be submitted under this announcement:

I. Application for Federal Assistance (SF-424)

II. Budget Information for Non-Construction Programs (SF-424A)

III. Narrative Proposal (includes all responses to threshold and ranking criteria and any required attachments. See section IV.C. for a complete list of required proposal contents.)

The proposal package *must* include all of the following materials:

I. Standard Form (SF) 424, Application for Federal Assistance

Complete the form. There are no attachments. Please be sure to include organization fax number and email address in Block 5 of the Standard Form SF 424.

Please note that the organizational Dun and Bradstreet (D&B) Data Universal Number System (DUNS) number must be included on the SF-424. Organizations may obtain a DUNS number at no cost by calling the toll-free DUNS number request line at 1-866-705-5711.

II. Standard Form SF 424A – Budget Information:

Complete the form. There are no attachments.

The total amount of federal funding requested for the project period should be shown on line 5(e) and on line 6(k) of SF-424A. If indirect costs are included, the amount of indirect costs should be entered on line 6(j). The indirect cost rate (i.e., a percentage), the base (e.g., personnel costs and fringe benefits), and the amount should also be indicated on line 22.

III. Narrative Proposal

The document should be readable in PDF, MS Word or Word Perfect WP6/7/8 for Windows and consolidated into a single file.

Application Preparation and Submission Instructions

Documents I through III listed under Proposal/Application Materials above should appear in the “Mandatory Documents” box on the Grants.gov Grant Application Package page.

For documents I and II, click on the appropriate form and then click “Open Form” below the box. The fields that must be completed will be highlighted in yellow. Optional fields and completed fields will be displayed in white. If you enter an invalid response or incomplete information in a field, you will receive an error message. When you have finished filling out each form, click “Save.” When you return to the electronic Grant Application Package page, click on the form you just completed, and then click on the box that says, “Move Form to Submission List.” This action will move the document over to the box that says, “Mandatory Completed Documents for Submission.”

For document III, you will need to attach electronic files. Prepare your narrative proposal as described in Section IV. C. of the announcement and save the document to your computer as an MS Word, PDF or WordPerfect file. When you are ready to attach your proposal to the application package, click on “Project Narrative Attachment Form,” and open the form. Click “Add Mandatory Project Narrative File,” and then attach your proposal (previously saved to your computer) using the browse window that appears. You may then click “View Mandatory Project

Narrative File” to view it. Enter a brief descriptive title of your project in the space beside “Mandatory Project Narrative File Filename;” the filename should be no more than 40 characters long. If there other attachments that you would like to submit to accompany your proposal, you may click “Add Optional Project Narrative File” and proceed as before. When you have finished attaching the necessary documents, click “Close Form.” When you return to the “Grant Application Package” page, select the “Project Narrative Attachment Form” and click “Move Form to Submission List.” The form should now appear in the box that says, “Mandatory Completed Documents for Submission.”

Once you have finished filling out all of the forms/attachments and they appear in one of the “Completed Documents for Submission” boxes, click the “Save” button that appears at the top of the Web page. It is suggested that you save the document a second time, using a different name, since this will make it easier to submit an amended package later if necessary. Please use the following format when saving your file: “Applicant Name – FY08 – Assoc Prog Supp – 1st Submission” or “Applicant Name – FY 08 Assoc Prog Supp – Back-up Submission.” If it becomes necessary to submit an amended package at a later date, then the name of the 2nd submission should be changed to “Applicant Name – FY08 Assoc Prog Supp – 2nd Submission.” Once your proposal package has been completed and saved, send it to your AOR for submission to U.S. EPA through Grants.gov. Please advise your AOR to close all other software programs before attempting to submit the application package through Grants.gov.

In the “Application Filing Name” box, your AOR should enter your organization’s name (abbreviate where possible), the fiscal year (e.g., FY08), and the grant category (e.g., Assoc Prog

Supp). The filing name should not exceed 40 characters. From the “Grant Application Package” page, your AOR may submit the application package by clicking the “Submit” button that appears at the top of the page. The AOR will then be asked to verify the agency and funding opportunity number for which the application package is being submitted. If problems are encountered during the submission process, the AOR should reboot his/her computer before trying to submit the application package again. [It may be necessary to turn off the computer (not just restart it) before attempting to submit the package again.] If the AOR continues to experience submission problems, he/she may contact Grants.gov for assistance by phone at 1-800-518-4726 or email at <http://www.grants.gov/help/help.jsp> or contact EPA GRANTS.GOV contact.

Proposal packages submitted thru grants.gov will be time/date stamped electronically.

If you have not received a confirmation of receipt from EPA (*not from grants.gov*) within 30 days of the proposal/application deadline, please contact Becky Brooks at 202-566-2762 or Brooks.Becky@epa.gov. Failure to do so may result in your proposal not being reviewed.